



Crl.O.P.No.6357 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.06.2023

Pronounced on : 07.06.2023

CORAM:

THE HON'BLE Mr. JUSTICE SUNDER MOHAN

Crl.O.P.No.6357 of 2021
and Crl.M.P.Nos.4248 and 4249 of 2021

1.Chainsingh
2.Sujan Singh

...Petitioners/A1 and A3

Versus

1.State Rep by its
Inspector of Police,
Central Crime Branch,
Egmore, Chennai – 08.

2.B.Thiyagu
Rajan Narula Associates,
No.150/86, Cisions Complex,
1st Floor, Montieth Road,
Egmore, Chennai – 08.

... Respondents



Crl.O.P.No.6357 of 2021

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.5225 of 2020 pending on the files of Metropolitan Magistrate for the exclusive trial of CCB Cases and CBCID Cases, Egmore, Chennai and quash the same.

For Petitioners	:	Mr.I.Abdul Basith
For R1	:	Mr.A.Damadoran
		Additional Public Prosecutor
For R2	:	No Appearance

ORDER

The petition is to quash the final report for the alleged offences under Section 63 of the Copyright Act, 1957 and Section 420 of the Indian Penal Code.

2. It is alleged in the final report that the petitioners were found in possession of counterfeit Adidas/Reebok ready-made Garments, Tags, Accessories and Labels; thus, they committed the aforesaid offences.

3. Mr. I.Abdul Basith, the learned counsel for the petitioners, would submit that the offence under Section 63 of the Copyright Act, 1957 is not



made out on the allegation; that the Copyright is applicable only to the works mentioned in Section 13 of the Copyright Act, 1957; that it does not apply to the Garments and other products which are mentioned in the impugned final report; and that there is no complaint from any person or consumer that they have been cheated by the purchase of any of the goods sold by the petitioners, and in the absence of such an allegation, the offence under Section 420 IPC is not made out. He relied upon the Judgment of Madhya Pradesh High Court in ***Kasim Ali vs. the State of Madhya Pradesh*** dated 13.06.2016 in Misc. Criminal Case No.1362 of 2015 in support of his submission that in a similar case, the Madhya Pradesh High Court had held that neither Section 63 of the Copyright Act, 1957 nor Section 420 of the Indian Penal Code, 1860 is attracted.

4. Mr. A.Damodaran, the learned Additional Public Prosecutor, submitted that the mere fact that the petitioners were in possession of spurious branded items is enough to infer that the said goods were intended to deceive the public and gain wrongfully. The learned Additional Public Prosecutor relied upon the Judgment of Delhi High Court in ***Sunil Kumar Gupta and another vs. State*** reported in ***1998 (47) DRJ 84*** in support of his



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submission that mere possession of spurious goods is sufficient to attract the offence under Section 420 IPC.

5. Though notice was sent to the second respondent, it was returned with the endorsement that the second respondent left the place. Therefore, this Court instructed the learned Additional Public Prosecutor to direct the first respondent to inform the second respondent about the pending proceedings. Pursuant to the information given by the first respondent, the second respondent appeared before this Court on 10.04.2023 and sought time to engage a counsel. However, the second respondent had not engaged a counsel and had not appeared before this Court thereafter.

6. This Court, on perusal of the impugned final report, finds that the allegation against the petitioners is that they were in possession of duplicate Reebok/Adidas Bags, Caps and Belts. The said allegation would not attract the offence under Section 63 of the Copyright Act, 1957. Section 63 of the Copyright Act, 1957 reads as follows:



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"63. Offence of infringement of copyright or other rights conferred by this Act - Any person knowingly infringes or abets the infringement of -

(a) the copyright in a work, or

*(b) any other right conferred by this Act, [except the right conferred by section 534 – A],
[shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:*

Provided that [where the infringement has not been made for gain in the course of trade or business] the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Explanation - Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section."

Section 13 of the Copyrights Act, 1957 reads as follows :

13. Works in which copyright subsists - *(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,-*



- (a) original literary, dramatic, musical and artistic works,*
- (b) cinematograph films; and*
- (c) [sound recording].*

7. From the above provisions, it is clear that unless the infringement relates to original literary, dramatic, musical and artistic works, cinematograph films and sound recordings, the provisions of the Act are not applicable. In the instant case, there are no such allegations. Hence, the offence under Section 63 of the Copyright Act, 1957 is not made.

8. As regards the offence under Section 420 IPC, there is nothing in the impugned final report to suggest that there was any deception practised upon any person. The possession of spurious goods is certainly not a legal act. However, in the absence of the ingredients to constitute the offence of cheating, one cannot be prosecuted merely because he was in possession of spurious goods. In order to constitute the offence of 420 IPC, there must be a deception practised on any person dishonestly or fraudulently. The impugned final report does not satisfy those necessary ingredients to attract the said offence of Section 420 IPC. The Judgment of the Madhya Pradesh High



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Court in ***Kasim Ali vs. The State of Madhya Pradesh*** dated 13.06.2016 in Misc. Criminal Case No.1362 of 2015 relied upon by the learned counsel for the petitioners squarely applies to the facts of the instant case. This Court is not in agreement with the view taken by the Delhi High Court in ***Sunil Kumar Gupta and another vs. State*** reported in ***1998 (47) DRJ 84*** for the aforesaid reasons.

9. Hence, the impugned final report is liable to be quashed. Accordingly, Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

07.06.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation Case: Yes/No
dk



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To

1. The Metropolitan Magistrate
for the exclusive trial of CCB Cases and CBCID Cases,
Egmore,
Chennai.

2. The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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SUNDER MOHAN, J.

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Pre-delivery order in
Crl.O.P.No.6357 of 2021
and Crl.M.P.Nos.4258 and 4249 of 2021

07.06.2023